

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

TYRONE E. REID

Petitioner,

-v-

ERNIE L. MOORE, Warden

Respondent.

Case No. C-3:05-cv-326

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

**ENTRY AND ORDER OVERRULING REID'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
REGARDING REID'S MOTION TO SET ASIDE JUDGMENT;
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS ON REID'S MOTION TO SET ASIDE
JUDGMENT IN ITS ENTIRETY, OVERRULING REID'S MOTION TO
SET ASIDE JUDGMENT (Doc. #63); OVERRULING REID'S
OBJECTIONS TO THE MAGISTRATE JUDGE'S ORDER AND TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
REGARDING REID'S MOTION TO RECUSE; ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
REGARDING REID'S MOTION TO RECUSE (Doc. #66) IN ITS
ENTIRETY; OVERRULING REID'S MOTION TO RECUSE (Doc.
#65);AND AGAIN TERMINATING THIS CASE**

Petitioner Tyrone E. Reid ("Reid") has two objections that are before the Court. Both are ripe for decision.

Reid first objects to the Report and Recommendations issued by Magistrate Judge Merz on Reid's Motion To Set Aside Judgment. (Doc. #64.) Therein, the Magistrate Judge recommends that Reid's Motion To Set Aside Judgment (doc. #63) be overruled. The Magistrate Judge recommends that Reid's Motion To Set Aside Judgment be overruled because there is no good basis to allow an independent action under Fed. R. Civ. P. 60(d) and because nothing said in Reid's latest Motion To Set Aside Judgment (doc. #63) persuades the Court that its prior

decision on this same issue was in error.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Magistrate Judge's Report and Recommendations is adopted in its entirety. Reid's objections to the Magistrate Judge's Report and Recommendations regarding Reid's Motion To Set Aside Judgment are overruled. Further, because objectively reasonable jurists would not disagree with this conclusion, Reid is denied leave to appeal in forma pauperis and is denied any requested certificate of appealability.

Reid's other objection (doc. #70) is to Magistrate Judge Merz's Decision and Order Denying Motion To Recuse Magistrate Judge and Report and Recommendations On Motion To Recuse District Judge (doc. #66). Therein, the Magistrate Judge denies Reid's Motion To Recuse the Magistrate Judge and recommends that Reid's Motion To Recuse the District Judge be denied. The Magistrate Judge reached this conclusion because Reid's motion papers do not show any basis for claiming personal bias of either Magistrate Judge Merz or District Judge Rose.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case as to the Magistrate Judge's Report and Recommendation regarding the recusal of District Judge Rose. Upon said review, the Magistrate Judge's Report and Recommendations is adopted in its entirety. District Judge Rose finds no basis for his recusal and thus will not recuse himself.

The Magistrate Judge's decision denying the Magistrate Judge's recusal is a nondispositive matter and is subject to a different standard of review. Federal Rule of Civil Procedure 72(a) provides that a district court must modify or set aside any part of a nondispositive order that is clearly erroneous or is contrary to law. *American Coal Sales Co. v.*

Nova Scotia Power, Inc., No. 2:06-cv-94, 2009 WL 467576 at *13 (S.D. Ohio Feb. 23, 2009)(citing Fed. R. Civ. P. 72(a)). Thus, a “clearly erroneous” standard applies only to factual findings made by the magistrate judge. *Id.* Legal conclusions are reviewed under the more lenient “contrary to law” standard. *Id.* Both of these standards provide considerable deference to the determinations made by the magistrate judge. *Id.* (citing *In re Search Warrants Issued August 29, 1994*, 889 F. Supp. 296, 298 (S.D. Ohio 1995)).

A magistrate judge’s factual findings are considered clearly erroneous if, on the entire evidence, the court is left with the definite and firm conviction that a mistake has been committed. *Id.* The test is whether there is evidence in the record to support the magistrate judge’s finding and whether the magistrate judge’s construction of that evidence is reasonable. *Id.* (citing *Heights Community Congress v. Hilltop Realty Corp.*, 774 F.2d 135, 140 (6th Cir. 1985), *cert. denied*, 475 U.S. 1019 (1986)). A legal conclusion is contrary to law if the court determines that the magistrate judge’s legal conclusions “contradict or ignore applicable precepts of law....” *Id.*(citing *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992)).

In this case, this District Judge has reviewed the Magistrate Judge’s factual findings and finds that they are not clearly erroneous. The District Judge has also reviewed the Magistrate Judge’s conclusions of law and finds that they do not contradict or ignore applicable law.

Reid’s Objections to the Magistrate Judge’s Order denying Reid’s Motion To Recuse the Magistrate Judge and Reid’s Objections to the Magistrate Judge’s recommendation that Judge Rose not recuse himself are without merit. Reid’s Objections to Magistrate Judge Merz’s Decision and Order Denying Motion To Recuse Magistrate Judge and Report and Recommendations On Motion To Recuse District Judge are, therefore, **OVERRULED**.

The Clerk is hereby ordered to serve a copy of this Order on Petitioner Tyrone E. Reid at

his last known address. The captioned cause is again hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this Sixteenth day of November, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Tyrone E. Reid